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Before the **Aug 30 4 05 PM '95**
FEDERAL COMMUNICATIONS COMMISSION FCC 95-352
Washington, DC 20554
DISPATCHED BY

In the matter of)
)
Amendment of Part 80 of the Rules) WT Docket No. 95 - 132
Concerning U.S. Coast Guard Vessel) RM-8500, 8592, 8598
Traffic Services (VTS) Systems in)
Sault Ste. Marie, Michigan; San Francisco,)
California; and Morgan City, Louisiana)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 9, 1995

Released: August 30, 1995

Comment Date: October 23, 1995

Reply Comment Date: November 7, 1995

By the Commission:

I. INTRODUCTION

1. This Notice of Proposed Rule Making (NPRM) proposes to amend Part 80 of the Commission's Rules, 47 C.F.R. Part 80, to modify the rules concerning the United States Coast Guard (Coast Guard) designated radio protection areas for mandatory Vessel Traffic Services (VTS). At the request of the Coast Guard we propose to add Sault Ste. Marie, Michigan, to the designated radio protection areas for mandatory VTS and establish marine VHF Channel 12 (156.600 MHz) as the VTS frequency for Sault Ste. Marie; modify the San Francisco VTS by designating Channel 12 (156.600 MHz) as a second VTS frequency; and add Morgan City, Louisiana, (commonly referred to as Berwick Bay) to the designated radio protection areas for mandatory VTS and establish marine Channel 11 (156.550 MHz) as the VTS frequency for Berwick Bay.¹ Public Notice of the Coast Guard's petition, RM-8500, was given on July 26, 1994 (Report No. 2023), and public notice of Coast Guard's petitions, RM-8592, RM-8598, was given on February 10, 1995 (Report No. 2057). No comments were filed in response to these Public Notices.

¹ See Letters from E.J. Brady to George Dillon, Chief, Aviation and Marine Branch (July 6, August 4 and 5, 1994).

II. BACKGROUND

2. The Coast Guard uses VTS systems as an advisory communications service to coordinate vessel movement and prevent collisions in large, busy port areas. Vessels report, by voice, information related to position, navigation and conditions affecting navigation, to the Coast Guard, which tracks the vessels' movements. VTS systems use VHF marine channels dedicated to their operations in Coast Guard designated VTS areas. The Coast Guard requires that certain large ships, tow and tug boats, dredges, and floating platforms participate in VTS systems.

3. The Commission amended its Rules in 1975, at the Coast Guard's request, to make frequencies available in certain designated areas exclusively for VTS communications.² Since then, we have added a number of VTS protection areas. Currently, Section 80.383 of the Rules, 47 C.F.R. § 80.383, lists five areas - Seattle, New York, New Orleans, Houston and San Francisco - as Coast Guard designated VTS areas. Frequencies allotted for VTS communications are available for assignment outside of VTS designated areas for other purposes on a noninterference basis.³

III. DISCUSSION

4. Under the Ports and Waterways Safety Act of 1972⁴, as amended by the Port and Tanker Safety Act of 1978⁵ and the Oil Pollution Act of 1990⁶, the Coast Guard may construct, operate, maintain, improve or expand VTS systems in any port or place under the jurisdiction of the United States, including the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to 33 U.S.C. § 1230. The Ports and Waterways Safety Act requires certain designated vessels which operate in a VTS area to utilize and comply with the VTS. Marine accidents in recent years have underscored the need for improving safety on the nation's waterways. Moreover, Congress mandated VTS participation in section 4107 of the Oil Pollution Act, 33 U.S.C. § 1223(a)(2). The Coast Guard has amended its VTS regulations to make participation in all VTS systems mandatory.⁷ A VTS system instills order and predictability on a waterway by coordinating vessel

² Report and Order, Docket No. 20444, 56 FCC 2d 1089 (1975).

³ See 47 C.F.R. § 80.373(f) n.3.

⁴ Ports and Waterways Safety Act of 1972, Pub. L. No. 92-340, 86 Stat. 424, 33 USC § 1221.

⁵ Port and Tanker Safety Act of 1978, Pub. L. No. 95-474, 92 Stat. 1471, 33 USC § 1221.

⁶ Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, 33 USC § 2701.

⁷ See 59 Fed. Reg. 36316, (1994)

movements through the collection, verification, organization, and dissemination of information.

5. Designating Sault Ste. Marie and Berwick Bay as VTS areas will allow the Coast Guard to manage vessel traffic in those areas more efficiently and will help protect the marine environment by preventing vessel collisions and groundings. We propose, therefore, to add Sault Ste. Marie and Berwick Bay to the Commission's list of designated radio protection areas for VTS systems specified in Section 80.383. The radio protection area for Sault Ste. Marie will be defined as "The rectangle between North latitudes 45 degrees and 47 degrees, and West longitudes 83 degrees and 85 degrees." (See Figure 1.) The radio protection area for Berwick Bay will be defined as "The rectangle between North latitudes 28 degrees 30 minutes and 30 degrees 30 minutes, and West longitudes 90 degrees 50 minutes and 92 degrees." (See Figure 2.) This area is part of the New Orleans VTS which discontinued operations on July 30, 1988, due to budgetary constraints.⁸

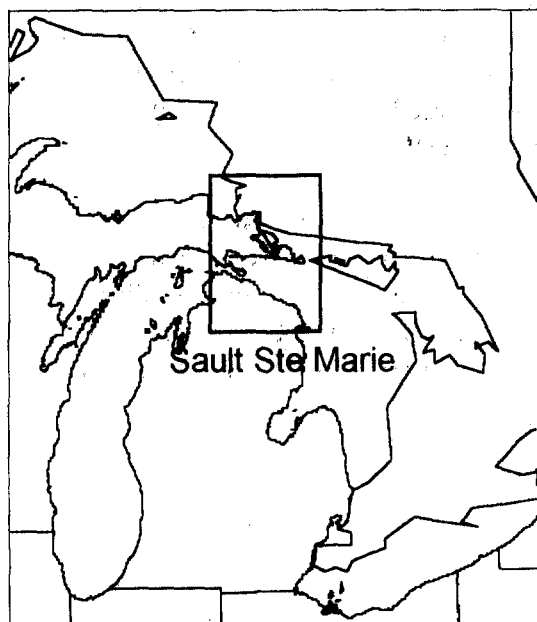


Figure 1

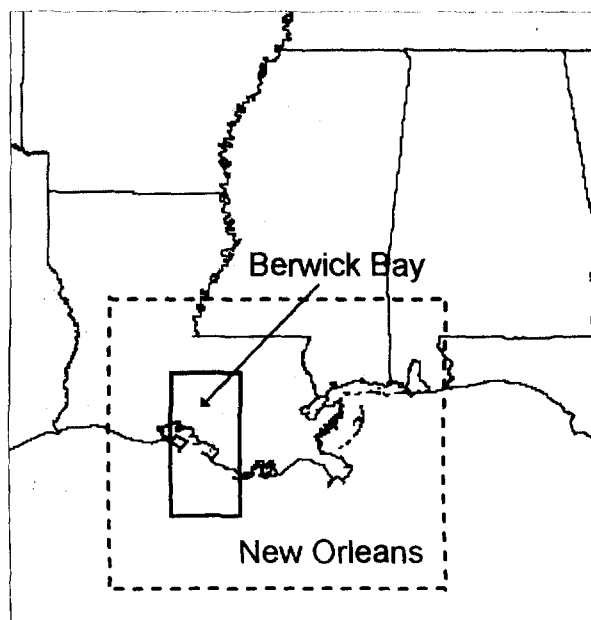


Figure 2

6. Additionally, we propose to permit private coast stations currently authorized on Channel 12 within the proposed Sault Ste. Marie VTS area to operate until the end of their current license term on a noninterference basis.⁹ The Commission staff will help affected licensees find suitable alternative channels. No fee will be charged for affected stations that apply for modification for an alternative channel before their next renewals. Private coast licenses for

⁸ 4 FCC Rcd 1590 (1989)

⁹ There currently are seven licensed private coast stations within the proposed designated radio protected area that would be affected by this proposal.

stations in the Berwick Bay area that are within the discontinued New Orleans VTS were granted only on a provisional basis, contingent on the possibility of reestablishment of the New Orleans VTS.

7. Also we propose to designate Channel 12 (156.600 MHz) as a second radio frequency for use within the San Francisco VTS radio protection area. The density of vessel traffic in the San Francisco Bay, which includes numerous recreational boats, ferries and commercial fishing boats, severely constrains the ability of large vessels to maneuver in the event of an emergency. The Coast Guard states that with mandatory participation, the current VTS channel, Channel 14 (156.700 MHz), will be inadequate to ensure safe and reliable communications in this busy and environmentally sensitive area. The addition of Channel 12 will permit increased navigational safety in the area by organizing traffic flow patterns, reduced meeting, crossing and overtaking situations between large vessels in tight spaces, and limited vessel speed. We propose to permit private coast stations currently authorized on Channel 12 within the proposed San Francisco VTS area to operate until the end of their current license term on a noninterference basis.¹⁰ The staff will help affected licensees find suitable alternative channels. No fee will be charged for affected stations that apply for modification for an alternative channel before their next renewal.

8. Finally, we propose to amend Section 0.331 to authorize the Chief, Wireless Telecommunications Bureau to amend the maritime service rules at the request of the United States Coast Guard to designate radio protection areas for mandatory VTS and establish marine channels as VTS frequencies for these areas. This will allow the Commission to expedite these requests, which will increase safe vessel transit and protect U.S. waters and associated natural resources from environmental harm.

IV. CONCLUSION

Regulatory Flexibility Act

9. We certify that Section 605(b) of the Regulatory Flexibility Act of 1980, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1980) does not apply to this rule making proceeding because, if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities as defined by Section 601(3) of the Regulatory Flexibility Act. Affected licensees will be assisted in arranging alternative channels for their use. The proposed rule would promote vessel safety by adding Sault Ste. Marie and Berwick Bay to the list of designated radio protection areas for VTS systems contained in the Commission's Rules, and add Channel 12 as a second radio frequency for use within the San Francisco VTS radio protection area. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy for the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. § 605(b).

¹⁰ There currently are six licensed private coast stations within the proposed designated radio protected area that would be affected by this proposal.

Ex Parte Rules - Non-Restricted Proceeding

10. This is a non-restricted notice and comment rule making proceeding. Ex Parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

Comment Dates

11. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before October 23, 1995, and reply comments on or before November 7, 1995. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

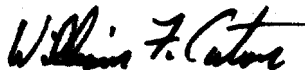
Ordering Clause

12. Authority for issuance of this Notice of Proposed Rule Making is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

Contact Person

13. For further information concerning this proceeding, contact James Shaffer, Wireless Telecommunications Bureau, (202) 418-0680.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

ATTACHMENT

APPENDIX

Title 47 of the Code of Federal Regulations, Parts 0 and 80, are proposed to be amended as follows:

Part 0 -- Commission organization

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.331 is amended by adding new paragraph (c)(4) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(4) Act on requests by the United States Coast Guard to designate radio protection areas for mandatory Vessel Traffic Services (VTS) and establish marine channels as VTS frequencies for these areas.

Part 80 -- Stations in the Maritime Services

3. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.383 is amended by revising the table in paragraph (a) to add Berwick Bay and Sault Ste. Marie to the list of geographic areas for the carrier frequency 156.550 MHz and 156.600 respectively; amending paragraph (b) by adding new paragraphs (b)(7) and (b)(8) to read as follows:

§ 80.383 Vessel Traffic Services (VTS) system frequencies.

* * * * *

(a) Assigned frequencies:

VESSEL TRAFFIC CONTROL FREQUENCIES

Carrier frequencies (MHz)	Geographic areas				
	*	*	*	*	*
156.550	New York, New Orleans, ¹ Houston, Prince William Sound, ³ Berwick Bay.				
156.600	New York, New Orleans, ¹ Houston, San Francisco, ³ Sault Ste. Marie. ³				
	*	*	*	*	*

¹ Until further notice, this frequency is available for use as permitted by § 80.373(f), notwithstanding the provisions of footnote 3 that are applicable to the VTS system. Availability is a result of the closure of the VTS system for the port area of New Orleans. If the United States Coast Guard re-establishes this system, the Commission may require operations pursuant to such conditional licenses for this frequency to cease, or may choose not to renew such conditional licenses. All licenses for this frequency will be expressly conditional upon the continued availability of the frequency for non-VTS use.

² Private coast station licenses for the use of this frequency will not be renewed beyond November 1, 1997. Continued use until expiration must be on a noninterference basis to Coast Guard VTS communications.

³ Private coast station licenses for the use of this frequency in this area will expire at the end of the current license term or five years after the adopted date of the final rule, whichever comes first. Continued use until expiration must be on a noninterference basis to Coast Guard VTS communications.

(b) * * *

(7) Sault Ste. Marie. The rectangle between North latitudes 45 degrees and 47 degrees, and West longitudes 83 degrees and 85 degrees.

(8) Berwick Bay. The rectangle between North latitudes 28 degrees 30 minutes and 30 degrees 30 minutes, and West longitudes 90 degrees 50 minutes and 92 degrees